

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of
ELZIE L. and JENNIE L. **CULP**

Appearances:

For Appellant: Eric L. Burton, Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel ;
Crawford H. Thomas, Associate Tax
Counsel

O P I N I O N

This appeal is made pursuant to Section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Elzie L. and Jennie L. Culp to proposed assessments of additional personal income tax in the amounts of \$14.46, \$9.29 and \$94.27 for the years 1947, 1948 and 1950, respectively.

The Appellants, husband and wife, filed joint returns for the years involved. Gains derived from sales of certain parcels of property were reported as capital gains. Respondent contends that these gains are taxable as ordinary income.

Section 17711 of the Revenue and Taxation Code provides, in part, as follows:

"**Capital assets*** means property held by the taxpayer (whether or not connected with his trade or business), but does not include
(a) . . . property held by the taxpayer primarily for sale to **customers** in the ordinary course of his trade or business, . . ."

This provision corresponds literally to a similar provision in the Internal Revenue Code and, therefore, United States tax cases can properly be used as authorities in the application of the California statute,

Three parcels of property are the subject of this appeal. The Whittier-Norwalk Boulevard parcel, consisting of 10.76 acres, was acquired by Appellants in 1932 and operated as a ranch. In 1947 or 1948, a road and water line was constructed on the property and the property was subdivided into 16 parcels. Appellants acquired the 16½ acre Beverly Boulevard property in 1945 for ranch property. Economic conditions caused Appellants to divide it into 4 or 5 parcels of several acres each. No improvements were made to this property. In 1947, Appellants acquired a parcel of 12½ acres on Guirado Road as a citrus ranch, It was farmed a short while then sold.

In 1947, Appellants sold 3 parcels of the Beverly Boulevard property, totalling 10 acres. In 1948 the remaining 69 acres were sold, and in the same year Appellants sold 7 unimproved lots of the Whittier-Norwalk Boulevard property. In 1949, an additional 5 lots of the latter property were sold, 2 lots having been improved by buildings moved thereon. The Guirado Road property was likewise sold in 1949. The remaining 4 lots of the Whittier-Norwalk/Boulevard property were sold in 1950. Appellant had constructed houses on 2 of these lots prior to sale,

Much of the property was sold to purchasers who approached Appellants of their own accord. Appellants carried on no advertising or sales promotion themselves. However, approximately 8 lots were listed with real estate agents and 5 were thus sold.

Appellants contend that they were ranchers, and not real estate dealers. However, it appears that substantially all of their income for the years in question was derived from the sale of property. In any event, property may be held for sale in the ordinary course of business even though the owner is engaged in another occupation. Mauldin v. Commissioner, 195 Fed; 2d 714. The purpose for which the land was acquired is not the controlling factor; the determining consideration is the purpose for which the property is held at the time of sale, whether as an investment or primarily for sale to customers in the ordinary course of business. Richards v. Commissioner, 81 Fed. 2d 369. The argument that the sales constituted the liquidation of an investment, although pertinent in an appropriate case, (Farley 7 T. C. 198), is overcome by the presence of development and sales activities. Ehrman v. Commissioner, 120 Fed. 2d 607:

It is our conclusion that Appellants, during the years in question, held their property primarily for sale in the ordinary course of business. To that end they acquired additional property, undertook some improvement and subdivision of their property, and engaged the services of real estate agents.

ORDER

Pursuant to the views expressed in the opinion of the Board **on file** in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of **Elsie L. and Jennie L. Culp** to proposed assessments of additional tax in the amounts of ~~\$14.46~~, \$929. and \$94.27 for the years 1947, 1948 and 1950, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 21st day of July, 1953, by the State Board of Equalization.

WM. G. BONELLI, Chairman

J. H. QUINN, Member

GEO. R. REILLY, Member

PAUL R. LEAKE, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary